

1 **CHANGES TO TRUST DEED FORECLOSURE PROVISIONS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Brad R. Wilson

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to trust deed foreclosures.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ imposes civil liability on a person who violates specified trustee provisions;
- 13 ▶ modifies a provision relating to successor trustees;
- 14 ▶ imposes a duty on a trustee who exercises a power of sale; and
- 15 ▶ requires a beneficiary or the beneficiary's agent to provide notice to a trustor on a

16 residential property if the beneficiary or agent does not intend to instruct a trustee to
17 defer a notice of sale despite a temporary reduced payment arrangement and
18 imposes civil liability for a failure to do so.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **57-1-22**, as last amended by Laws of Utah 2002, Chapter 209

26 **57-1-25**, as last amended by Laws of Utah 2010, Chapter 66

27 ENACTS:

28 **57-1-23.5**, Utah Code Annotated 1953

29 **57-1-24.5**, Utah Code Annotated 1953



31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **57-1-22** is amended to read:

33 **57-1-22. Successor trustees -- Appointment by beneficiary -- Effect -- Substitution**
34 **of trustee -- Recording -- Form.**

35 (1) (a) The beneficiary may appoint a successor trustee at any time by filing for record
36 in the office of the county recorder of each county in which the trust property or some part of
37 the trust property is situated, a substitution of trustee.

38 (b) The new trustee shall succeed to all the power, duties, authority, and title of the
39 trustee named in the deed of trust and of any successor trustee.

40 (c) The beneficiary may, by express provision in the substitution of trustee, ratify and
41 confirm action taken on the beneficiary's behalf by the new trustee prior to the recording of the
42 substitution of trustee.

43 (2) The substitution shall:

44 (a) identify the trust deed by stating:

45 (i) the names of the original parties to the trust deed;

46 (ii) the date of recordation; and

47 (iii) (A) the book and page where the trust deed is recorded; or

48 (B) the entry number;

49 (b) include the legal description of the trust property;

50 (c) state the name and address of the new trustee; and

51 (d) be executed and acknowledged by all of the beneficiaries under the trust deed or
52 their successors in interest.

53 (3) (a) If not previously recorded[;] at the time of recording a notice of default, the
54 successor trustee shall file for record, in the office of the county recorder of each county in
55 which the trust property or some part of it is situated, the substitution of trustee.

56 (b) A copy of the substitution of trustee shall be sent in the manner provided in
57 Subsection 57-1-26(2) to any:

58 (i) person who requests a copy of any notice of default or notice of sale under
59 Subsection 57-1-26(1)(a); and

60 (ii) person who is a party to the trust deed to whom a copy of a notice of default would
61 be required to be mailed by Subsection 57-1-26(3).

62 (4) A substitution of trustee shall be in substantially the following form:

63 Substitution of Trustee

64 (insert name and address of new trustee)

65 is hereby appointed successor trustee under the trust deed executed by ____ as
66 trustor, in which ____ is named beneficiary and ____ as trustee, and filed for record

67 _____(month\day\year), and recorded in Book ____, Page ____, Records of ____

68 County, (or filed for record _____(month\day\year), with recorder's entry No. ____, ____

69 County), Utah.

70 (Insert legal description)

71

72 Signature_____

73 (Certificate of Acknowledgment)

74 Section 2. Section **57-1-23.5** is enacted to read:

75 **57-1-23.5. Civil liability for unauthorized person who exercises power of sale.**

76 (1) As used in this section:

77 (a) "Unauthorized person" means a person who does not qualify as a trustee under
78 Subsection 57-1-21(1)(a)(i) or (iv).

79 (b) "Unauthorized sale" means the exercise of a power of sale by an unauthorized
80 person.

81 (2) (a) An unauthorized person who conducts an unauthorized sale is liable to the
82 trustor for the actual damages suffered by the trustor as a result of the unauthorized sale or
83 \$2,000, whichever is greater.

84 (b) In an action under Subsection (2)(a), the court shall award a prevailing plaintiff the
85 plaintiff's costs and attorney fees.

86 Section 3. Section **57-1-24.5** is enacted to read:

87 **57-1-24.5. Notice to trustor of intent not to defer notice of sale.**

88 (1) A beneficiary, or the beneficiary's authorized agent, shall deliver or send a notice to
89 a trustor as provided in Subsection (2) if:

90 (a) the trust property is residential;

91 (b) a notice of default is filed under Section 57-1-24 with respect to the trust property;

92 (c) during the three-month period described in Subsection 57-1-24(3), the beneficiary
93 or agent agrees to accept reduced payments from the trustor on a temporary basis; and

94 (d) notwithstanding the reduced payment arrangement, the beneficiary or agent does
95 not intend to instruct the trustee to defer giving notice of sale under Section 57-1-25 later than
96 the earliest time allowed under Subsection 57-1-24(3).

97 (2) A notice under Subsection (1) shall:

98 (a) be in writing;

99 (b) (i) be hand delivered to the trustor; or

100 (ii) be sent by certified mail, return receipt requested, to the trustor at the address of the
101 trust property;

102 (c) be delivered or sent on or before the date that is 30 days after the notice of default is
103 filed or 10 days after the beneficiary or agent agrees to accept reduced payments, whichever is
104 later; and

105 (d) inform the trustor that, despite the reduced payment arrangement, the beneficiary or
106 agent does not intend to instruct the trustee to defer giving notice of sale under Section 57-1-25
107 later than the earliest time allowed under Subsection 57-1-24(3).

108 (3) A beneficiary or agent who sends or delivers notice to a trustor under this section
109 shall mail a copy of the notice to the trustee.

110 (4) The failure of a beneficiary or agent to comply with a requirement of this section
111 does not affect the validity of a trustee's sale of the trust property.

112 (5) (a) A beneficiary or agent who fails to send or deliver a notice to a trustor as
113 required in this section is liable to the trustor for the actual damages suffered by the trustor as a

114 result of the failure or \$2,000, whichever is greater.

115 (b) In an action under Subsection (5)(a), the court shall award a prevailing plaintiff the
116 plaintiff's costs and attorney fees.

117 Section 4. Section **57-1-25** is amended to read:

118 **57-1-25. Notice of trustee's sale -- Description of property -- Time and place of**
119 **sale.**

120 (1) The trustee shall give written notice of the time and place of sale particularly
121 describing the property to be sold:

122 (a) by publication of the notice:

123 (i) (A) at least three times;

124 (B) once a week for three consecutive weeks;

125 (C) the last publication to be at least 10 days but not more than 30 days before the date
126 the sale is scheduled; and

127 (D) in a newspaper having a general circulation in each county in which the property to
128 be sold, or some part of the property to be sold, is situated; and

129 (ii) in accordance with Section 45-1-101 for 30 days before the date the sale is
130 scheduled;

131 (b) by posting the notice:

132 (i) at least 20 days before the date the sale is scheduled; and

133 (ii) (A) in some conspicuous place on the property to be sold; and

134 (B) at the office of the county recorder of each county in which the trust property, or
135 some part of it, is located; and

136 (c) if the stated purpose of the obligation for which the trust deed was given as security
137 is to finance residential rental property:

138 (i) by posting the notice, including the statement required under Subsection (3)(b):

139 (A) on the primary door of each dwelling unit on the property to be sold, if the property
140 to be sold has fewer than nine dwelling units; or

141 (B) in at least two conspicuous places on the property to be sold, in addition to the

142 posting required under Subsection (1)(b)(ii)(A), if the property to be sold has nine or more
143 dwelling units; or

144 (ii) by mailing the notice, including the statement required under Subsection (3)(b), to
145 the occupant of each dwelling unit on the property to be sold.

146 (2) (a) The sale shall be held at the time and place designated in the notice of sale.

147 (b) The time of sale shall be between the hours of 8 a.m. and 5 p.m.

148 (c) The place of sale shall be clearly identified in the notice of sale under Subsection
149 (1) and shall be at a courthouse serving the county in which the property to be sold, or some
150 part of the property to be sold, is located.

151 (3) (a) The notice of sale shall be in substantially the following form:

152 Notice of Trustee's Sale

153 The following described property will be sold at public auction to the highest bidder,
154 payable in lawful money of the United States at the time of sale, at (insert location of sale)
155 _____ on _____(month\day\year), at __.m. of said day, for the purpose of
156 foreclosing a trust deed originally executed by ____ (and ____, his wife,) as trustors, in favor
157 of ____, covering real property located at ____, and more particularly described as:

158 (Insert legal description)

159 The current beneficiary of the trust deed is _____ and the record
160 owners of the property as of the recording of the notice of default are _____ and
161 _____.

162 Dated _____(month\day\year). _____

Trustee

164 (b) If the stated purpose of the obligation for which the trust deed was given as security
165 is to finance residential rental property, the notice required under Subsection (1)(c) shall
166 include a statement, in at least 14-point font, substantially as follows:

167 "Notice to Tenant

168 As stated in the accompanying Notice of Trustee's Sale, this property is scheduled to be
169 sold at public auction to the highest bidder unless the default in the obligation secured by this

170 property is cured. If the property is sold, you may be allowed under federal law to continue to
171 occupy your rental unit until your rental agreement expires, or until 90 days after the date you
172 are served with a notice to vacate, whichever is later. If your rental or lease agreement expires
173 after the 90-day period, you may need to provide a copy of your rental or lease agreement to the
174 new owner to prove your right to remain on the property longer than 90 days after the sale of
175 the property.

176 You must continue to pay your rent and comply with other requirements of your rental
177 or lease agreement or you will be subject to eviction for violating your rental or lease
178 agreement.

179 The new owner or the new owner's representative will probably contact you after the
180 property is sold with directions about where to pay rent.

181 The new owner of the property may or may not want to offer to enter into a new rental
182 or lease agreement with you at the expiration of the period described above."

183 (4) The failure to provide notice as required under Subsections (1)(c) and (3)(b) or a
184 defect in that notice may not be the basis for challenging or invalidating a trustee's sale.

185 (5) A trustee qualified under Subsection 57-1-21(1)(a)(i) or (iv) who exercises a power
186 of sale has a duty to the trustor not to defraud, or conspire or scheme to defraud, the trustor.